

LEGISLATURE OF NEBRASKA
 ONE HUNDREDTH LEGISLATURE
 FIRST SESSION
LEGISLATIVE BILL 108

FINAL READING

Introduced by Agriculture Committee; Erdman, 47, Chairperson;
 Chambers, 11; Dierks, 40; Dubas, 34; Karpisek, 32;
 Preister, 5; Wallman, 30

Read first time January 8, 2007

Committee: Agriculture

A BILL

1 FOR AN ACT relating to fences; to amend sections 2-4806, 2-4808,
 2 34-102, 34-112, and 37-1012, Reissue Revised Statutes
 3 of Nebraska; to eliminate provisions relating to fence
 4 viewers and viewing; to provide a civil action relating
 5 to fence disputes; to provide for mediation of such
 6 disputes; to harmonize provisions; to repeal the original
 7 sections; to outright repeal sections 34-101, 34-103,
 8 34-104, 34-105, 34-106, 34-107, 34-108, 34-109, 34-110,
 9 34-111, and 34-113, Reissue Revised Statutes of Nebraska;
 10 and to declare an emergency.
 11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 2-4806, Reissue Revised Statutes of
2 Nebraska, is amended to read:

3 2-4806 The administrator shall adopt and promulgate rules
4 and regulations setting appropriate fee guidelines for the services
5 provided under the Farm Mediation Act, which fees shall not exceed
6 actual costs and shall be borne equally by all parties, and setting
7 forth any procedures or requirements necessary to implement the
8 act. The rules and regulations shall provide that the fees shall be
9 collected by the farm mediation service and retained by the farm
10 mediation service to offset its costs and that the farm mediation
11 service may require payment of the fees or a portion thereof
12 prior to a mediation meeting. The administrator may adopt and
13 promulgate rules and regulations that allow a separate fee schedule
14 for mediation services that are not eligible for partial or full
15 federal reimbursement.

16 Sec. 2. Section 2-4808, Reissue Revised Statutes of
17 Nebraska, is amended to read:

18 2-4808 (1) Any borrower or creditor may request mediation
19 of any indebtedness incurred in relation to an agricultural loan
20 by applying to the farm mediation service. Any party involved in
21 an adverse decision from a United States Department of Agriculture
22 agency may request mediation by applying to the farm mediation
23 service. The farm mediation service may also accept disputes
24 regarding division fences, including disputes referred by a court
25 pursuant to section 6 of this act.

1 (2) The farm mediation service shall notify all the
2 parties and, upon their consent, schedule a meeting with a
3 mediator. The parties shall not be required to attend any mediation
4 meetings under this section, and failure to attend any mediation
5 meetings or to participate in mediation under this section shall
6 not affect the rights of any party in any manner. Participation in
7 mediation under this section shall not be a prerequisite or a bar
8 to the institution of or prosecution of legal proceedings by any
9 party.

10 Sec. 3. Section 34-102, Reissue Revised Statutes of
11 Nebraska, is amended to read:

12 34-102 ~~When two or more persons shall have lands~~
13 ~~adjoining,~~ (1) When there are two or more adjoining landowners,
14 each of them shall ~~make~~ construct and maintain a just proportion
15 of the division fence between them, except that if the adjoining
16 landowners each cause or allow the use of the division fence to
17 confine livestock upon their respective properties, each landowner
18 shall construct and maintain the division fence between them in
19 equal shares. This section ~~÷ PROVIDED, HOWEVER,~~ this shall not
20 be construed to compel the erection and maintenance of a division
21 fence ~~where~~ if neither of the adjoining landowners desires such
22 division fence. ~~Unless the owners of such lands adjoining shall~~

23 (2) Unless the adjoining landowners have agreed
24 otherwise, such fence shall be a lawful fence, as defined in
25 section 34-115.

1 (3) The duty assigned to adjoining landowners by this
2 section applies (a) when either or both of the adjoining lands lie
3 within an area zoned for agricultural or horticultural purposes as
4 defined in section 77-1359 and either or both of the adjoining
5 lands are utilized as agricultural or horticultural land and (b) in
6 all other areas of the state when both of the adjoining lands are
7 utilized as agricultural or horticultural land.

8 Sec. 4. Section 34-112, Reissue Revised Statutes of
9 Nebraska, is amended to read:

10 34-112 Whenever a division fence shall be is injured or
11 destroyed by fire, floods, or other casualty, the person bound to
12 make and repair construct and maintain such fence, or any part
13 thereof, shall make ~~or repair~~ repairs to the same, or his or her
14 just proportion thereof, ~~within ten days after he shall be thereto~~
15 ~~requested by any person interested therein, such requisition to be~~
16 ~~in writing and signed by the party making the same.~~ as provided in
17 section 34-102.

18 Sec. 5. An owner of land may enter upon adjacent land
19 owned by another person to construct, maintain, or repair a
20 division fence pursuant to sections 34-102 and 34-112, but such
21 access shall be allowed only to the extent reasonably necessary
22 to construct, maintain, or repair the division fence. This section
23 does not authorize any alterations to adjacent land owned by
24 another person, including the removal of trees, buildings, or other
25 obstacles, without the consent of the adjacent landowner or a

1 court order or the removal of any items of personal property lying
2 thereon without the consent of the adjacent landowner or a court
3 order.

4 Sec. 6. (1) Whenever a landowner desires to construct a
5 division fence or perform maintenance or repairs to an existing
6 division fence, such landowner shall give written notice of such
7 intention to any person who is liable for the construction,
8 maintenance, or repair of the division fence. Such notice may
9 be served upon any nonresident by delivering the written notice
10 to the occupant of the land or the landowner's agent in charge
11 of the land. The written notice shall request that the person
12 liable for the construction, maintenance, or repair satisfy
13 his or her obligation by performance or by other manner of
14 contribution. After giving written notice, a landowner may commence
15 or complete construction of a division fence, or commence or
16 complete maintenance or repair upon an existing division fence,
17 in which cases any cause of action under this section, sections
18 34-102 and 34-112, and section 5 of this act shall be an action
19 for contribution.

20 (2) If the person so notified either fails to respond to
21 such request or refuses such request, the landowner sending notice
22 may commence an action in the county court of the county where the
23 land is located. If the landowners cannot agree what proportion of
24 a division fence each shall construct, maintain, or repair, whether
25 by performance or by contribution, either landowner may commence an

1 action, without further written notice, in the county court of the
2 county where the land is located. An action shall be commenced by
3 filing a fence dispute complaint on a form prescribed by the State
4 Court Administrator and provided to the plaintiff by the clerk of
5 the county court. The complaint shall be executed by the plaintiff
6 in the presence of a judge, a clerk or deputy or assistant clerk of
7 a county court, or a notary public or other person authorized by
8 law to take acknowledgments and be accompanied by the fee provided
9 in section 33-123. A party shall not commence an action under this
10 subsection until seven days after giving notice under subsection
11 (1) of this section and shall commence the action within one year
12 after giving such notice.

13 (3) Upon filing of a fence dispute complaint, the court
14 shall set a time for hearing and shall cause notice to be served
15 upon the defendant. Notice shall be served not less than five
16 days before the time set for hearing. Notice shall consist of a
17 copy of the complaint and a summons directing the defendant to
18 appear at the time set for hearing and informing the defendant that
19 if he or she fails to appear, judgment will be entered against
20 him or her. Notice shall be served in the manner provided for
21 service of a summons in a civil action. If the notice is to be
22 served by certified mail, the clerk shall provide the plaintiff
23 with written instructions, prepared and provided by the State
24 Court Administrator, regarding the proper procedure for service by
25 certified mail. The cost of service shall be paid by the plaintiff,

1 but such cost and filing fee shall be added to any judgment awarded
2 to the plaintiff.

3 (4) In any proceeding under this section, subsequent to
4 the initial filing, the parties shall receive from the clerk of
5 the court information regarding availability of mediation through
6 the farm mediation service of the Department of Agriculture or
7 the state mediation centers as established through the Office of
8 Dispute Resolution. Development of the informational materials and
9 the implementation of this subsection shall be accomplished through
10 the State Court Administrator. With the consent of both parties, a
11 court may refer a case to mediation and may state a date for the
12 case to return to court, but such date shall be no longer than
13 ninety days from the date the order is signed unless the court
14 grants an extension. If the parties consent to mediate and if a
15 mediation agreement is reached, the court shall enter the agreement
16 as the judgment in the action. The costs of mediation shall be
17 shared by the parties according to the schedule of fees established
18 by the mediation service and collected directly by the mediation
19 service.

20 (5) If the case is not referred to mediation or if
21 mediation is terminated or fails to reach an agreement between the
22 parties, the action shall proceed as a civil action subject to the
23 rules of civil procedure.

24 Sec. 7. The changes made to sections 34-102, 34-112, and
25 37-1012 by this legislative bill, sections 5 and 6 of this act, and

1 the repeal of sections 34-101, 34-103 to 34-111, and 34-113 by this
2 legislative bill apply commencing on the effective date of this
3 act, except that prior law applies to any division fence dispute
4 commenced prior to such date.

5 Sec. 8. Section 37-1012, Reissue Revised Statutes of
6 Nebraska, is amended to read:

7 37-1012 (1) The Game and Parks Commission shall have
8 the same responsibility with regard to division fences as a
9 private landowner as provided in sections ~~34-101~~ 34-102 to 34-117
10 and sections 5 and 6 of this act, except that in those areas
11 where a state recreational trail is developed, the commission
12 shall have the same responsibility as a railroad as provided
13 in sections 74-601 to 74-604, but the type of fence required
14 under section 74-601 shall not be required for those areas where
15 a state recreational trail is developed. All fences shall be
16 constructed and maintained as required under this subsection unless
17 such construction and maintenance is waived in writing by affected
18 adjoining landowners. The commission shall be responsible for the
19 construction and replacement cost of any fence agreed to by the
20 commission and adjoining landowner. The commission shall also be
21 responsible for providing supplies for the maintenance of any fence
22 along a state recreational trail or for the reimbursement to the
23 adjoining landowner for the cost of supplies for the maintenance of
24 any fence along a state recreational trail. The adjoining landowner
25 shall be responsible for the maintenance of the fence. In such

1 areas the type of fence may be (a) wire fence of at least four
2 barbed wires, of a size not less than twelve and one-half gauge
3 fencing wire, to be secured to posts, the posts to be at no greater
4 distance than one rod from each other, or (b) a fence of any type
5 that is agreed to by the commission and adjoining landowners. All
6 fences constructed under either subdivision (a) or (b) of this
7 subsection shall be deemed to be manifestly designed to exclude
8 intruders for the purposes of subdivision (1)(c) of section 28-521.

9 (2) The responsibility of the commission for fences along
10 a state recreational trail shall not exceed the amount appropriated
11 to the commission by the Legislature for such purpose during any
12 biennium, except that the commission may use any funds specifically
13 gifted or obtained by grant application to the commission the sole
14 purpose of which is to provide fencing for a state recreational
15 trail.

16 (3) The commission shall adopt and promulgate rules and
17 regulations to carry out this section.

18 Sec. 9. Original sections 2-4806, 2-4808, 34-102, 34-112,
19 and 37-1012, Reissue Revised Statutes of Nebraska, are repealed.

20 Sec. 10. The following sections are outright repealed:
21 Sections 34-101, 34-103, 34-104, 34-105, 34-106, 34-107, 34-108,
22 34-109, 34-110, 34-111, and 34-113, Reissue Revised Statutes of
23 Nebraska.

24 Sec. 11. Since an emergency exists, this act takes effect
25 when passed and approved according to law.